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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/197,278	11/20/1998	BRIAN J. BROWN	S63.2-6769	1094
490	7590	01/25/2005	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			BUI, VY Q	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/197,278

Applicant(s)

BROWN ET AL.

Examiner

Vy Q. Bui

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-41, 43-50, 52-54 and 56-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-41, 43-50, 52-54 and 56-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

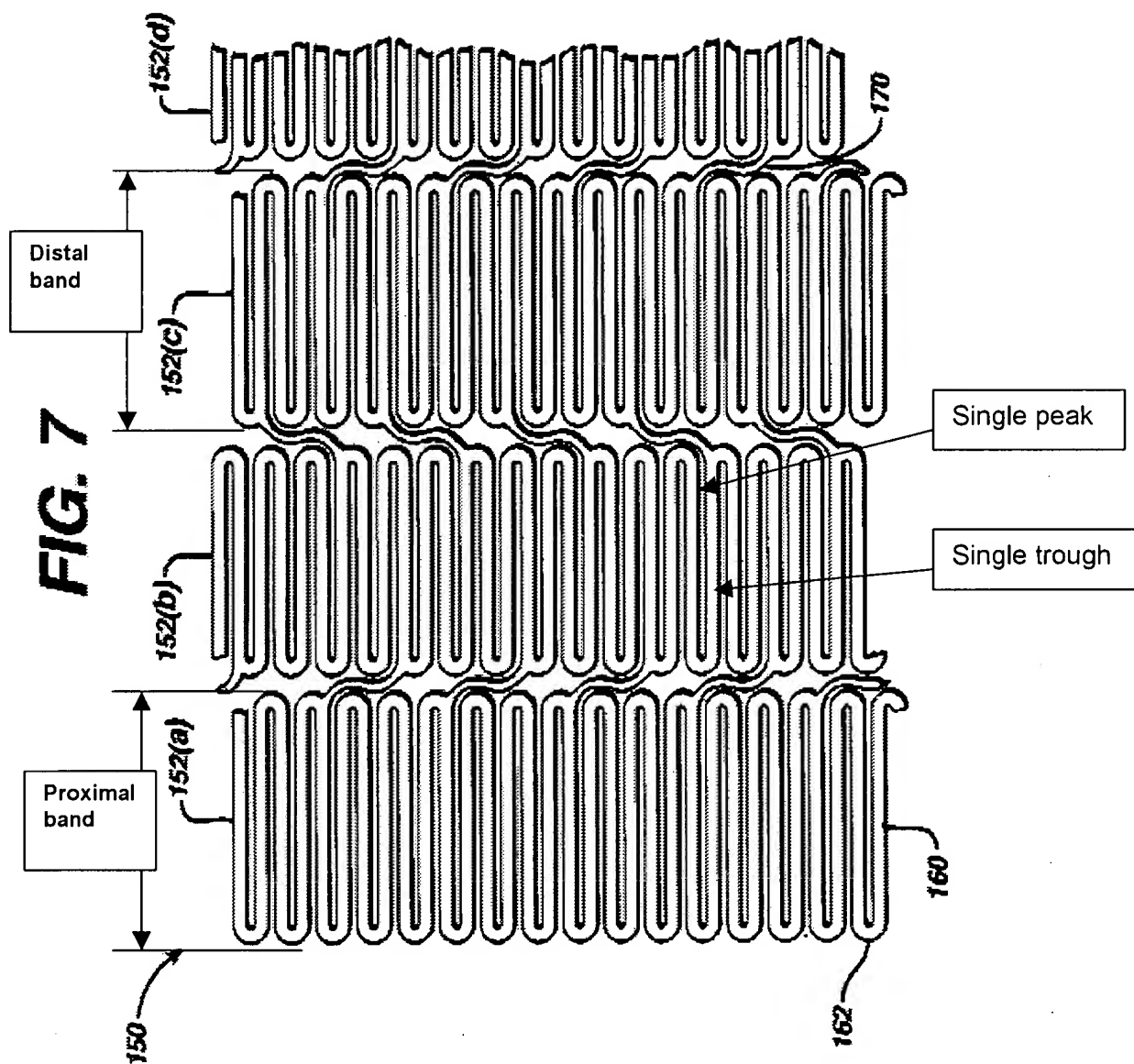
1. Claims 50, 52-53 are rejected under 35 U.S.C. 102(e) as being anticipated by KANESAKA et al. (5,911,754).

As to claims 50, 52-53, Kanesaka (Fig. 1, 5, for example) discloses stent 1' comprising first/second undulating band-like element (6a,6b)/(4a,4b) interconnected by interconnecting elements 5' as recited in the claims. Notice that interconnected element 5' as shown in Kanesaka Fig. 5 are substantially linear when the stent is expanded.

2. Claims 46-48 and 58 are rejected under 35 U.S.C. 102(e) as being anticipated by MATHIS et al. (6,129,755).

As to claims 46-48 and 58, MATHIS (Figs. 3-4 and 7, for example) discloses stent 1 comprising a proximal undulating band-like element, an intermediate undulating band-like element, distal undulating band-like element, second distal undulating band-like element, substantially linear interconnecting elements (Figs. 3-4, for example) comprising first interconnecting elements, second interconnecting elements, and third interconnecting elements as recited in the claims. Notice that Figs. 3-4 show linear interconnecting elements and Fig. 7 shows interconnected elements spaced apart from each other as recited in the claims.

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3. Claim 59 is rejected under 35 U.S.C. 102(e) as being anticipated by BERRY et al. (6,231,598).

BERRY (Fig. 5, for example) shows interconnected first and second serpentine circumferential bands 14 and 21 respectively, wherein first serpentine circumferential bands 14 having more turns and longer longitudinal length than those of second serpentine bands 21 as recited in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 39-41, 43-45, 54 and 56-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over MATHIS et al. (6,129,755) in view of ROUBIN et al. (6,106,548).

As to claims 39-41, 43-44, 54 and 57, MATHIS (Figs. 3-4 and 7, for example) discloses stent 1 comprising a first undulating band-like element 152(a), an second undulating band-like element 152(b), third undulating band-like element 152(c), fourth undulating band-like element 152(d), substantially linear interconnecting elements 70 comprising first interconnecting elements, second interconnecting elements, and third interconnecting elements substantially as recited in the claims, except for the number of peaks of the first undulating band like element separating circumferential adjacent first interconnecting elements is less than the number of peaks of the second undulating band like element separating circumferential adjacent second interconnecting elements. However, ROUBIN (Figs. 3, 9; Col. 7, lines 1-43) discloses stent 40

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without some of connecting elements 48 to provide a change in the flexibility of the stent for facilitating deployment of the stent in a body vessel (col. 7, lines 1-4). In view of ROUBIN, it would be obvious to one of ordinary skill in the art at the time the invention was made to omit one or more connecting element 70 between band-like elements 152(c) and 152(b) of MATHIS stent to have first path and different second path and to provide a variation in the flexibility of the stent for facilitating deployment of MATHIS stent in a body vessel.

As to claims 45 and 56, as mentioned above, MATHIS (Figs. 3-4 and 7, for example) discloses substantially the claimed invention, except for the first and second band-like elements have different amplitudes. ROUBIN (Fig. 4A, 10; col. 7, lines 44-49) discloses different band-like elements of different amplitudes for different flexibility. In view of ROUBIN, it would be obvious to one of ordinary skill in the art at the time the invention was made to provide a MATHIS stent with different amplitudes for first and second band-like elements so as to provide different flexibility for the modified MATHIS stent.

Allowable Subject Matter

Claim 49 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 11/15/2004 have been fully considered but they are not persuasive.

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The Applicants asserted that: "It would not be obvious to omit connecting elements from the Mathis stent. Claim 1 of Mathis recites that "any openings in said tubular member are substantially small, whereby any adjacent embolic material in a vessel is substantially trapped between said stent and a vessel". This concept is mirrored in the specification. One of ordinary skill in the art would not be motivated to remove connectors from the Mathis stent and thereby increase the size of the openings. In fact, this would defeat the purpose of the Mathis stent.", (Remarks, page 11, second paragraph).

However, Mathis claim 1, paragraph (c) requires the ratio of the number of struts per hoop to the length of a strut as measured in inches is greater than 400 and any opening in said stent are substantially small to trap any adjacent embolic material between the stent and a vessel. After reading Mathis, one of ordinary skill in the art would understand that for a specific hoop length, Mathis does not limit the maximum number of struts per hoop length and one of ordinary skill in the art can increase the number of struts per hoop length to decrease the size of the openings so that one can afford to omit some of the connecting elements to create new openings as long as these new openings are still substantially small to trap embolic material.

Conclusion

The amended claims and new claim 59 in the application are rejected with new ground(s) of rejection. Unamended claims 40-41, 43-48 are rejected with substantially the same ground of rejection as in the previous "Office Action".

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


01/20/2005

Vy Q. Bui
Primary Examiner
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